

STATE OF MICHIGAN
COURT OF APPEALS

RANDY SEGUIN,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 194387

Benzie Circuit Court

LC No. 95-004599-NI

BENZIE COUNTY, BENZIE COUNTY SHERIFF
PAUL STILES, JOHN BRAZASKI and BETH
BAESCH,

Defendant-Appellees.

Before: Taylor, P.J., and Hood and Gribbs, JJ.

TAYLOR, P.J., (concurring in part and dissenting in part).

I concur with part II of the majority opinion and dissent from part I on the majority opinion. Thus, I would affirm the trial court's order granting summary disposition in its entirety.

In part I of its opinion, the majority holds that the trial court erred in ruling that plaintiff failed to plead facts to establish that a "special relationship" existed between him and defendants to overcome the "public duty" doctrine. The majority opinion cites the four elements a plaintiff must plead in order to establish a "special relationship" and concludes that plaintiff sufficiently pleaded them. I disagree. As set forth in *White v Beasley*, 453 Mich 308, 316; 552 NW2d 1 (1996), element 1 is "an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured" and element 4 is the "party's justifiable reliance on the municipality's affirmative undertaking." Plaintiff's first amended complaint simply does not allege elements 1 and 4 of the "special relationship" test. While plaintiff may be entitled to a remand in order to allow him to file another amended complaint, MCR 2.116(C)(I)(5), it is incorrect to say that plaintiff's first amended complaint alleges elements 1 and 4 under *White v Beasley*. I would affirm.

/s/ Clifford W. Taylor